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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,175	01/18/2001	Mark Buonanno	CSCO-38240	9529
7590	01/26/2005		EXAMINER	
WAGNER, MURABITO & HAO LLP			BORISSOV, IGOR N	
Third Floor			ART UNIT	PAPER NUMBER
Two North Market Street				3629
San Jose, CA 95113			DATE MAILED: 01/26/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/766,175	BUONANNO ET AL.	
	Examiner	Art Unit	
	Igor Borissov	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 28 October 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-6,10-19 and 22-25 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-6,10-19 and 22-25 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 23 April 2001 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

DETAILED ACTION

Response to Amendment

Applicant's amendment of 28/10/2004 is acknowledged and entered. Claims 7-9, 20-21 and 26 have previously been canceled. Claims 1, 10 and 16 have been amended. Claims 1-6, 10-19 and 22-25 are currently pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 22. The claim is directed to a system, and recites following limitations: "a workflow process coupled to the interface...", and "logic coupled to the workflow process". The workflow process is not a structural element, and reciting it in the claim make the claim confusing.

Claims 23-25 are rejected as being dependent on claim 22.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-6 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As an initial matter, the United States Constitution under Art. I, §8, cl. 8 gave Congress the power to "[p]romote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries". In carrying out this power, Congress authorized under 35 U.S.C. §101 a grant of a patent to "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition or matter, or any new and useful improvement thereof." Therefore, a fundamental premise is that a patent is a statutorily created vehicle for Congress to confer an exclusive right to the inventors for "inventions" that promote the progress of "science and the useful arts". The phrase "technological arts" has been created and used by the courts to offer another view of the term "useful arts". See *In re Musgrave*, 167 USPQ (BNA) 280 (CCPA 1970). Hence, the first test of whether an invention is eligible for a patent is to determine if the invention is within the "technological arts".

Further, despite the express language of §101, several judicially created exceptions have been established to exclude certain subject matter as being patentable subject matter covered by §101. These exceptions include "laws of nature", "natural phenomena", and "abstract ideas". See *Diamond v. Diehr*, 450, U.S. 175, 185, 209 USPQ (BNA) 1, 7 (1981). However, courts have found that even if an invention incorporates abstract ideas, such as mathematical algorithms, the invention may nevertheless be statutory subject matter if the invention as a whole produces a "useful, concrete and tangible result." See *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* 149 F.3d 1368, 1973, 47 USPQ2d (BNA) 1596 (Fed. Cir. 1998).

This "two prong" test was evident when the Court of Customs and Patent Appeals (CCPA) decided an appeal from the Board of Patent Appeals and Interferences (BPAI). See *In re Toma*, 197 USPQ (BNA) 852 (CCPA 1978). In *Toma*, the court held that the recited mathematical algorithm did not render the claim as a whole non-statutory using the Freeman-Walter-Abele test as applied to *Gottschalk v. Benson*, 409 U.S. 63, 175 USPQ (BNA) 673 (1972). Additionally, the court decided separately on the issue of the "technological arts". The court developed a "technological arts" analysis:

*The "technological" or "useful" arts inquiry must focus on whether the claimed subject matter...is statutory, not on whether the product of the claimed subject matter...is statutory, not on whether the prior art which the claimed subject matter purports to replace...is statutory, and not on whether the claimed subject matter is presently perceived to be an improvement over the prior art, e.g., whether it "enhances" the operation of a machine. *In re Toma* at 857.*

In *Toma*, the claimed invention was a computer program for translating a source human language (e.g., Russian) into a target human language (e.g., English). The court found that the claimed computer implemented process was within the "technological art" because the claimed invention was an operation being performed by a computer within a computer.

The decision in *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* never addressed this prong of the test. In *State Street Bank & Trust Co.*, the court found that the "mathematical exception" using the Freeman-Walter-Abele test has little, if any, application to determining the presence of statutory subject matter but rather, statutory subject matter should be based on whether the operation produces a "useful, concrete and tangible result". See *State Street Bank & Trust Co.* at 1374. Furthermore, the court found that there was no "business method exception" since the court decisions that purported to create such exceptions were based on novelty or lack of enablement issues and not on statutory grounds. Therefore, the court held that "[w]hether the patent's claims are too broad to be patentable is not to be judged under §101, but rather under §§102, 103 and 112." See *State Street Bank & Trust Co.* at 1377. Both of these analysis goes towards whether the claimed invention is non-statutory because of the presence of an abstract idea. Indeed, *State Street* abolished the Freeman-Walter-Abele test used in *Toma*. However, *State Street* never addressed the second part of the analysis, i.e., the "technological arts" test established in *Toma* because the invention in *State Street* (i.e., a computerized system for determining the year-end income, expense, and capital gain or loss for the portfolio) was already determined to be within the technological arts under the *Toma* test. This dichotomy has been recently

acknowledged by the Board of Patent Appeals and Interferences (BPAI) in affirming a §101 rejection finding the claimed invention to be non-statutory. See *Ex parte Bowman*, 61 USPQ2d (BNA) 1669 (BdPatApp&Int 2001).

In the present application, **claims 1-6** are completely silent with regard to technology and is purely an abstract idea or process steps that are employed without the use of any technology. The claims are no more than a suggested idea that a customer will be notified if there is a problem with a customer's order. The mere fact of notifying the customer does not provide a useful, concrete and tangible results. As per method step of: "*establishing a telephonic interaction between a human call agent and the customer*", the examiner stipulates that use of a telephone constitutes a trivial use of technology. However, the claimed invention must utilize technology in a non-trivial manner (*Ex parte Bowman*, 61 USPQ2d 1665, 1671 (Bd. Pat. App. & Inter. 2001)). Although Bowman is not precedential, it has been cited for its analysis.

Furthermore, the examiner submits that there are absolutely no limitations included in this claim that would suggest a computer or data processing device is being used to carry out the processes.

In accordance with MPEP 2106 (IV)(B)(2)(b) "Statutory Process Claims", not all processes are statutory under 35 U.S.C. 101. *Schrader*, 22 F.3d at 296, 30 USPQ2d at 1460. To be statutory, a claimed computer related process must either: (A) result in a physical transformation outside the computer for which a practical application in the technological arts is either disclosed in the specification or would have been known to a skilled artisan, or (B) be limited to a practical application within the technological arts. See *Diamond v. Diehr*, 450 U.S. at 183-184, 209 USPQ at 6 (quoting *Cochrane v. Deener*, 94 U.S. 780, 787-788 (1877)). The claims in the present application do not recite any physical transformation of data from one form to another, which is based upon an algorithm or a calculation by a computer or processor, nor is there any technology claimed that would be used to transform the data.

Because the independently claimed invention is directed to an abstract idea which does not provide practical applications, and does not recite a limitation in the technological arts, those claims are not permitted under 35 USC 101 as being related to non-statutory subject matter. However, in order to consider those claims in light of the prior art, examiner will assume that those claims recite statutorily permitted subject matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5, 6, 10, 12, 14-16, 18 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mikurak (US 6,606,744 B1).

Claim 1. Mikurak teaches a method for proactive service notification in e-commerce environment, comprising:

identifying and/or purchasing products and/or services by a customer (C. 163, L 53-57);

monitoring said product and/or services identified by the customer to detect any problems related to the product (C. 163, L. 63-65; C. 164, L. 4);

upon detecting any problem related to the product, proactively notifying the customer about said problem via telephone (C. 164, L. 4-7; C. 163, L. 30-35).

Mikurak does not specifically teach that said proactive notification of the customer via the telephone is conducted by a *human call center agent*.

However, Mikurak does teach providing a customer support center with a life operator (C. 77, L. 9-12); and providing a human customer service representative to

assist customers making an order over the network with possible problems (C. 260, L. 9-10, 48, 58).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Mikurak to include that said proactive notification of the customer via the telephone is conducted by a human call center agent, because it would advantageously improve customer service, thereby potentially increase revenue. As specifically stated in Mikurak, the customer service aspect of e-commerce is as important as selling the actual products, and a lack of customer service, or poor customer service, can destroy any relationship the user has established with the electronic business (C. 260, L. 12-16).

Claim 3. Researching the problem, proactively informing the customer of the problem and proposing a solution to the customer (C. 163, L. 26-41).

Claim 5. Identifying and/or purchasing products and/or services by a customer through a website (C. 163, L 53-57);

Claim 6. Providing services to a customer in B2B environment (C. 224, L. 43-44; C. 225, L. 38-39).

Claim 10. Mikurak teaches a system for collaborative installation management in a network-based supply chain environment, comprising:

means for identifying and/or purchasing products and/or services by a customer (C. 163, L 53-57);

means for monitoring said product and/or services which the customer identified and/or purchased to detect any problems related to the product (C. 163, L. 63-65; C. 164, L. 4);

means for proactively notifying the customer about a problem related to the product via telephone (human operator) upon detecting any of said problem (C. 164, L. 4-7; C. 163, L. 30-35).

Mikurak does not specifically teach that said means for proactive notification of the customer via the telephone includes means for proactive notification of the customer via the telephone by a *human call center agent*.

However, Mikurak does teach providing a customer support center with a live operator (C. 77, L. 9-12); and providing a human customer service representative to assist customers making an order over the network with possible problems (C. 260, L. 9-10, 48, 58).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Mikurak to include that said means for proactive notification of the customer via the telephone includes means for proactive notification of the customer via the telephone by a human call center agent, because it would advantageously improve customer service, thereby potentially increase revenue. As specifically stated in Mikurak, the customer service aspect of e-commerce is as important as selling the actual products, and a lack of customer service, or poor customer service, can destroy any relationship the user has established with the electronic business (C. 260, L. 12-16).

Claim 12. Means for researching the problem, proactively informing the customer of the problem and proposing a solution to the customer (C. 163, L. 26-41).

Claim 14. Means for identifying and/or purchasing products and/or services by a customer through a website (C. 163, L 53-57);

Claim 15. Means for providing services to a customer in B2B environment (C. 224, L. 43-44; C. 225, L. 38-39).

Claim 16. Mikurak teaches a computer-readable medium having instructions embedded therein for performing a method for proactive service notification in e-commerce environment when executed by a computer, comprising:

identifying and/or purchasing products and/or services by a customer (C. 163, L. 53-57);

monitoring said product and/or services which the customer identified and/or purchased to detect any problems related to the product (C. 163, L. 63-65; C. 164, L. 4);

upon detecting any problem related to the product, proactively notifying the customer about said problem via telephone (human operator) (C. 164, L. 4-7; C. 163, L. 30-35).

Mikurak does not specifically teach that said instructions include instructions for proactive notification of the customer via the telephone by a *human call center agent*.

However, Mikurak does teach providing a customer support center with a life operator (C. 77, L. 9-12); and providing a human customer service representative to assist customers making an order over the network with possible problems (C. 260, L. 9-10, 48, 58).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Mikurak to include instructions for proactive notification of the customer via the telephone by a human call center agent, because it would advantageously improve customer service, thereby potentially increase revenue. As specifically stated in Mikurak, the customer service aspect of e-commerce is as important as selling the actual products, and a lack of customer service, or poor customer service, can destroy any relationship the user has established with the electronic business (C. 260, L. 12-16).

Claim 18. Said instructions further include: researching the problem, proactively informing the customer of the problem and proposing a solution to the customer (C. 163, L. 26-41).

Claim 22. Mikurak teaches a system for collaborative installation management in a network-based supply chain environment, comprising:

an interface for identifying and/or purchasing products and/or services by a customer through a website (C. 163, L. 53-57);

means for monitoring said product and/or services which the customer identified and/or purchased to detect any problems related to the product (C. 163, L. 63-65; C. 164, L. 4);

a communication device (telephone) for proactively notifying the customer about a problem related to the product upon detecting any of said problem (C. 164, L. 4-7; C. 163, L. 30-35); and]

a customer support center including a telephone (C. 77, L. 9-12).

Mikurak does not specifically teach that the call center is provided for proactive notification of the customer by a *call center agent*.

However, Mikurak does teach that said customer support center is provided with a live operator (C. 77, L. 9-12); and that a human customer service representative is provided to assist customers making an order over the network with possible problems (C. 260, L. 9-10, 48, 58).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Mikurak to include that the call center is provided for proactive notification of the customer by a *call center agent*, because it would advantageously improve customer service, thereby potentially increase revenue. As specifically stated in Mikurak, the customer service aspect of e-commerce is as important as selling the actual products, and a lack of customer service, or poor customer service, can destroy any relationship the user has established with the electronic business (C. 260, L. 12-16).

Claim 23. Same system as in claim 22. Information as to *wherein the human call center agent automatically fixes the problem and informs the customer of the problem and the solution* is non-functional language and given no patentable weight. Claims Directed to an Apparatus must be distinguished from the prior art in terms of structure rather than function, *In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959).

A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the

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claim. *Ex parte Masham*, 2 USPQ2d 1657 (bd Pat. App. & Inter. 1987). Thus the structural limitations of claim 23 are disclosed in Mikurak as described herein. Also, as described, the limitations of claim 23 do not distinguish the claimed apparatus from the prior art.

Claim 24. Same system as in claim 22. Information as to *wherein the human call center agent researches the problem, explains the problem to the customer, and proposes a solution* is non-functional language and given no patentable weight. Claims Directed to an Apparatus must be distinguished from the prior art in terms of structure rather than function, *In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959).

A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1657 (bd Pat. App. & Inter. 1987). Thus the structural limitations of claim 24 are disclosed in Mikurak as described herein. Also as described the limitations of claim 24 do not distinguish the claimed apparatus from the prior art.

Claims 2, 11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mikurak in view of Cerami et al. (US 2002/0087680) (Cerami).

Claims 2, 11 and 17.

Mikurak teaches: automatically and proactively notifying customers about problems and suggested solutions (C-163, L. 30-31).

Mikurak does not specifically teach automatically and proactively fixing the problem.

Cerami teaches a system, method and computer-readable media having instructions for performing said method when executed by a computer, comprising: providing xDSL service for a customer via a network [0064]; monitoring the performance of the network (software and hardware) to detect any faults [0068]; [0069]; proactively

notifying a customer service center if a fault occurs, which enables the customer service representative (human) to personally notify all customers affected by the fault [0049]; [0091]; and further comprising automatically and proactively fixing the problem and informing the customer of the problem [0091].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Mikurak to include automatically and proactively fixing the problem, as disclosed in Cerami, because it would advantageously improve customer service, thereby potentially increase revenue. As specifically stated in Mikurak, the customer service aspect of e-commerce is as important as selling the actual products, and a lack of customer service, or poor customer service, can destroy any relationship the user has established with the electronic business (C. 260, L. 12-16).

Claims 4, 13, 19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mikurak in view of Official Notice.

Claims 4. Mikurak teaches establishing a telephone (collaboration) session between the customer and the service provider to resolve the problem.

Mikurak does not specifically teach that said telephone (collaboration) session is established between *representatives* of the customer and the service provider.

Official notice is taken that it is old and well known to provide a specific written authority to execute and sign one or more legal instruments for another person (power of attorney).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify view of Mikurak to include *establishing a collaboration session between representatives of the customer and the service provider to resolve the problem*, because it would simplify this process for both sides.

Claim 13. Mikurak teaches means for establishing a telephone (collaboration) session between the customer and the service provider to resolve the problem.

Mikurak does not specifically teach that said means for establishing a telephone (collaboration) session include means for establishing a telephone (collaboration) session between *representatives* of the customer and the service provider.

Official notice is taken that it is old and well known to provide a specific written authority to execute and sign one or more legal instruments for another person (power of attorney).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Mikurak to include means for *establishing a collaboration session between representatives of the customer and the service provider to resolve the problem*, because it would advantageously simplify this process for both sides.

Claim 19. Mikurak teaches establishing a telephone (collaboration) session between the customer and the service provider to resolve the problem.

Mikurak does not specifically teach that said telephone (collaboration) session is established between *representatives* of the customer and the service provider.

Official notice is taken that it is old and well known to provide a specific written authority to execute and sign one or more legal instruments for another person (power of attorney).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Mikurak to include *establishing a collaboration session between representatives of the customer and the service provider to resolve the problem*, because it would advantageously simplify this process for both sides.

Claim 25. Mikurak teaches a system for establishing a telephone (collaboration) session between the customer and the service provider to resolve the problem.

Mikurak does not specifically teach that said system for establishing a telephone (collaboration) session includes a system for establishing a telephone (collaboration) session between *representatives* of the customer and the service provider.

Official notice is taken that it is old and well known to provide a specific written authority to execute and sign one or more legal instruments for another person (power of attorney).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Mikurak to include a *system for establishing a collaboration session between representatives of the customer and the service provider to resolve the problem*, because it would simplify this process for both sides.

Examiner's Note

A "traverse" is a denial of an opposing party's allegations of fact. The Examiner respectfully submits that applicants' arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret applicants' arguments and comments as constituting a traverse, applicants' arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 707.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

If applicant does not seasonably traverse the well-known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

Response to Arguments

Applicant's arguments in respect to claims 1-6, 10-19 and 22-25 were fully considered but are moot in view of new ground of rejection.

Conclusion

Any inquiry concerning this communication should be directed to Igor Borissov at telephone number (703) 305-4649.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 308-1113.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, John Weiss, can be reached at (703) 308- 2702.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington D.C. 20231

or faxed to:

(703) 305-7687 [Official communications; including After Final communications labeled "Box AF"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.

Igor Borissov
Patent Examiner
Art Unit 3629



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1/22/2005